

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Douglas Gerald Tibken,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-77-1142
Parcel No. 320/00520-228-000

On May 24, 2010, the above captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Douglas Gerald Tibken, was self-represented and requested the appeal proceed without a hearing. Beyond the certified record, he did not offer any additional evidence for consideration. The Polk County Board of Review designated Assistant County Attorneys Ralph Marasco and David Hibbard as its legal representatives, and submitted evidence in support of its decision. The Appeal Board having reviewed the entire record, and being fully advised, finds:

Findings of Fact

Douglas Gerald Tibken is the owner of a residentially classified property located at 400 38th Street, West Des Moines Iowa. The subject site is 9000 square feet and is improved with a single-family, split-foyer style home. According to the property record card, the improvement was built in 1979 and has 1225 square feet of above-grade living area, and 1144 square feet of basement area with 416 square feet of average-plus basement finish. The property also has a two-car built-in garage and a deck with 144 square feet. .

Tibken protested to the Polk County Board of Review regarding the 2009 assessment. The total assessment is \$147,200, allocated \$36,600 in land value and \$110,600 in improvement value. The protest was based on the following grounds: 1) the assessment is not equitable as compared with other like property in the taxing district under Iowa code section 441.37(1)(a), and; 2) the property is assessed for more than authorized by law under section 441.37(1)(b). While Tibken filled out the section of the petition regarding equity, it appears that he was only using this portion of the form to list his comparables in regards to a claim of over assessment. The Board of Review denied the petition citing the assessment is equitable with that of similar property in the area.

Tibken then appealed to this Board, asserting a single claim that the property is assessed for more than authorized by law. Tibken's plain language claim is the "property is over assessed based upon very comparable sales." He asserts the correct value of the property is \$120,000, allocated \$30,000 to the land and \$90,000 to the improvements.

Tibken has not offered any new evidence to this Board. At the Board of Review, Tibken offered two properties which he considered as comparable and representing market value. These properties are located on the subject's same street and identified as 312 38th Street and 604 38th Street. Property record cards for these properties were also submitted by Tibken and included within the certified record. In a letter to the Board of Review, dated April 20, 2009, Tibken asserts these two properties demonstrate his property is over assessed. Tibken states in the April 2009 letter the property located at 312 38th Street sold on February 24, 2009, for \$125,000. He notes this property is larger than his and in better condition, having been recently remodeled. Tibken also asserts his home, which is a split-foyer design, has less appeal and thus less value compared to 312 38th Street which is a two-story design. Tibken does not offer any support for this final assertion, nor does he identify if the remodeling took place prior or subsequent to the February 2009 transfer. Lastly, on the supplied property record card, we note this transaction was the result of a foreclosure or bank sale. As such, this

sale would not be considered as a “normal” transaction by the Department of Revenue guidelines, nor would it be considered by most real estate appraisers as an “arm’s length” transaction.

The second property offered by Tibken as a comparable is located at 604 38th Street. This property, according to Tibken’s April 2009 letter, was “on the market for a long time, nearly two years, before selling.” However, no formal history of this listing was provided. This property sold in January 2009 for \$160,000, but has a January 1, 2009, assessment of \$184,100. Tibken points out this property is also a two-story compared to his split-foyer design, it is much larger with 2030 total square feet, plus a garage and full basement, and has also been recently remodeled inside and out. Tibken does not identify what the extent or quality of the remodeling was, and again does not identify if the remodeling took place prior or subsequent to the recently identified sale.

The summation of Tibken’s April 2009 letter is the value of his property in comparison to these properties should be “no more than \$120,000, possibly less.” Tibken does not adjust either property to his to demonstrate an adjusted sales price, and does not offer any other evidence in support of his claim the total value is \$120,000.

The Polk County Board of Review supplied an “Appraiser Analysis” in the certified record, which recommended no change to the assessment. This recommendation was based on the comparables submitted by Tibken as not being “comparable due to style and size....plus one of the sales used is a foreclosure.” The Board of Review submitted an appraisal completed by Norman (Mike) Swaim which was completed to reflect the value as of January 1, 2009. This report identifies an interior inspection of the subject property on May 4, 2009, and was signed on May 10, 2009.

Swaim reported three properties he considers comparable, all of which sold from June to August 2008. Two of the three properties are located within a half mile of the subject, but are noted as being superior in overall condition. The third property offered by Swaim is more distant, one and a half miles southeast of the subject, but offers similar condition to the subject. The three properties had

a sales price range of \$149,900 to \$156,500 and an adjusted range of value of \$146,900 to \$153,200. Both pre-adjusted and adjusted ranges bracket the subject's assessed value of \$145,300.

The property record card shows the subject as having 1225 square feet of above grade living area. Swaim measured the property and indicates 1240 square feet of above grade living area. We give deference to Swaim's calculations since he was recently at the property and personally measured it. The assessed value per square foot of the subject is \$118.71, using the 1240 square foot of gross living area. The adjusted price per square foot of the three sales range from \$127.68 to \$142.12 per square foot with an average of \$135.61. The subject's assessed value is less than both the adjusted sales range and the average of that range.

Swaim's final conclusion of value from the overall range is \$147,000, which he indicates "supports the assessed value reported." We agree.

Based upon the foregoing, the Appeal Board finds insufficient evidence has been submitted by Tibken to support the claim that his property is assessed at greater than market value.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment*

Appeal Bd., 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Tibken fails to provide this Board with adequate evidence that the current assessed valuation is more than authorized by law (market value) and fails to provide sufficient support for what he believes is the correct value of the property.

In the opinion of the Appeal Board, the evidence does not support the claim that the property is assessed for more than the value authorized by Iowa Code section 441.21. Therefore, we affirm the January 1, 2009, assessment of the property located at 400 38th Street, West Des Moines, Iowa, as determined by the Polk County Board of Review.

THE APPEAL BOARD ORDERS the assessment of 400 38th Street, West Des Moines, Iowa, as of January 1, 2009, set by the Polk County Board of Review, is affirmed.

Dated this 7 day of June, 2010


Karen Oberman, Board Chair


Jacqueline Rypma, Board Member

Cc:

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APPELLANT

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>6-7</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	